

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-02**

October 19, 2015

Dr. Martin Jones

RE: FOIA Appeal 2016-02

Dear Dr. Jones:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Disability Services ("DDS") improperly withheld records you requested under the DC FOIA.

Background

On June 4, 2014, you submitted a request to the DDS seeking records pertaining to an investigation you believe DDS conducted that led to your termination from employment.

The DDS responded to your request on August 5, 2015, stating, "A diligent search of [DDS] files did not uncover any documents responsive to your request."

On October 1, 2015, you appealed the DDS's decision, asserting that you found the response letter to be "very disappointing." You further stated your belief that "it appears someone is masking the results of those formal interviews[.]" and that you have "reason to believe that [Eleanor Holmes-Norton's] office therefore forwarded the request to DDS and DDS decided not to respond . . ."

The DDS responded to your appeal in a letter to this Office dated October 19, 2015. In its response, the DDS reasserted that it conducted a reasonable search and found no documents responsive to your request.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

Under the DC FOIA, an agency is required to disclose materials only if they are "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is whether DDS conducted an adequate search for the documents you requested, and your belief that records exist despite DDS's representation to the contrary. DC FOIA requires only that a search conducted in response to a FOIA request be reasonably calculated to produce relevant documents. The test is not whether any documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

In order to establish the adequacy of a search,

'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make reasonable determinations as to: (1) the location of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68).

DDS provided this Office with specific information as to the search it conducted to respond to your request. DDS's FOIA officer described the search as follows:

As part of my investigation I inquired with the District's Office of the Chief Technology Officer ("OCTO") for any emails that contained Mr. Jones' name for the timeframe at issue from the individuals Mr. Jones indicated may have been involved in the "investigation." OCTO provided me with the results of the query, none of which contained emails that related to any "investigation" or allegations resulting [sic] Mr. Jones' termination from DDS. Though I did not limit my query, when I received OCTO's response, I focused on locating any emails between these people and DDS administrators and human capital employees that might constitute an "investigation" related to Mr. Jones' termination. I was unable to find any such emails.

I likewise asked DDS's Chief of Staff and DDS's Human Capital Administrator to review their files and provide me with information related to any investigation conducted by the agency resulting in Mr. Jones' termination. Upon review of their files, there were no investigative documents responsive to Mr. Jones' request.

In light of DDS's description of the search it conducted, we conclude that DDS complied with the applicable standard under DC FOIA; that is, DDS made a reasonable determination as to the locations of the records you requested and searched for the records in those locations. We therefore accept DDS's position that no responsive documents exist.

Conclusion

Based on the foregoing, we affirm the DDS's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker
Associate Director
Mayor's Office of Legal Counsel

cc: Jason Botop, Assistant General Counsel, DDS (via email)